I have expressed my views on the basis that, in fact, the application was properly heard summarily. However, the statutory limitation only applied to registered trade unions as to which nothing (as I have said) had been expressly pleaded. Thus, in my view, the point was not properly raised by way of an interlocutory application at that particular stage of the proceedings. It should have been expressly pleaded that this was a registered trade union, and the point dealt with at the trial.

I consider this appeal should be dismissed with costs here and below.

Appeal allowed.

Solicitors: *Sen & Lim; K. L. Devaser.*

S. SARAVANEMUTHU v. JULIANA NETTO

[A.C.J. (Shepherd J.) June 6, 1958]

[K.L. — Civil Appeal No. 4 of 1958]

Landlord and Tenant — Recovery of possession — Control of Rent Ordinance, 1956, s.12(1) (a) and (2) — "Such date" — Meaning of — Discretion.

This appeal was concerned with the meaning and effect of section 12(1) (a) of the Control of Rent Ordinance, 1956 when properly construed and with the question whether or not the learned Magistrate properly exercised the discretion reposed in him by subsection (2) of that section, or indeed exercised it at all by postponing his order for possession for 6 months from the date of the order.

Held: (1) "such date" is a relative term, but it is not plain in the context of subsection (1) to what other expression it refers. It means after the expiration of the last day of the period of 14 days; it is inclusive, therefore it means at the beginning of the 15th day of the period during which the rent lawfully due was in arrears;

(2) the Magistrate had consciously exercised the discretion reposed in him of staying or suspending execution for the maximum period of 6 months permitted by sub-section (2) of section 12.

CIVIL APPEAL.

Chan Hua Eng for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Shepherd J.: — The only points of importance arising out of this appeal are as to the meaning and effect of section 12(1)(a) of the Control of Rent Ordinance, 1956 when properly construed; and as to the question whether or not the learned Magistrate properly exercised the discretion reposed in him by sub-section (2) of that section; or indeed exercised it at all. Section 12(1)(a) reads:

> " No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —
>
> (a) where rent lawfully due has been in arrear for fourteen days or upwards:
>
> Provided that rent shall not be deemed to be in arrear if the tenant proves that it was tendered before such date";

"such date" is a relative term; but it is not plain in the context to what other expression it refers. In my view it means after the expiration of the last day of the period of 14 days; it is inclusive; that is to say, therefore, it means at the beginning of the 15th day of the period during which the rent lawfully due was in arrears.

As to the second point, it was suggested that the learned Magistrate in postponing his order for possession for six months from the date of the order had regard simply to the desire of the present appellant to appeal and so to give him ample time. I am bound by the record and although there was nothing in the grounds of judgment to the effect that the learned Magistrate had consciously exercised his discretion, clearly his attention was drawn to it and upon the basis of the maxim *omnia praesumuntur rite et solemniter esse acta*, I must conclude that he consciously exercised the discretion reposed in him of staying or suspending (the meaning is the same) execution of his order or postponing the date of possession (which is how he expresses the matter in his order) for the maximum period of 6 months permitted by sub-section (2). There is nothing on the record to lead me to suppose that he was wrong in the view he took of the proper way to exercise his discretion. Upon the facts as he found them, the rent was tendered (and refused) on the 15th day after it became due and having regard to the fact that it was a "near thing", in the sense in which I have used the phrase in my unreported judgment in Ipoh Civil Appeal No.1/1957, *S. N. Nachiappa Chettiar v. E. Gulam Kader*, it would seem that he exercised his discretion properly. That being so, I see no reason why I should interfere with his decision. The sub-section permits the Court, that is to say, the Magistrate, if he thinks fit, to discharge or rescind his order at any time provided that the condition contained therein (viz., the rental of $50 a month to be paid until the date of recovery) is complied with; and as I made an order extending the period of 6 months by a further period of one month in the

exercise of my inherent jurisdiction, the appellant has time to apply to the Magistrate accordingly. I do not consider it right for me to indicate in this judgment how the Magistrate should exercise his discretion if an application is made to him. In the judgment quoted above I said:

"I believe the learned Magistrate was strongly influenced by the equitable doctrine to which I have referred (the equity against forfeiture of a lease)..... and I believe he also had in mind the 'near thing' to which I have referred above, namely, that arrears of rent where probably forthcoming shortly after receipt of the effective notice to quit. The result was that the learned Magistrate decided — and I think rightly in the circumstances — to exercise his discretion by suspending his order for 6 months and he indicated that if the conditions which he imposed were carried out faithfully he would be prepared to rescind his order after the elapse of that period."

This was written in the course of his judgment by a very experienced Magistrate in a rent control case and might possibly serve as guide to the Magistrate in this case, if application be made to him. But that is a matter as to which he must exercise his own discretion personally.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.*; *K. L. Devaser.*

PUBLIC PROSECUTOR v. NG AH TAK

[A.Cr.J. (Good J.) June 27, 1958]

[Ipoh — Criminal Appeal No. 18 of 1958]

Criminal Law — Penal Code, s.324 — Acid-throwing — Sentence — First offender — Mitigation.

Acid-throwing is a serious offence. The people who indulge in acid-throwing are savages who deserve no mercy as they show no mercy to the people they attack. It is absolutely no mitigation in a case of this kind to say that it is a first offence. The severest penalty should be imposed in all cases of acid-throwing.

CRIMINAL APPEAL.

Abdul Kadir bin Yusof (Federal Counsel) for the appellant.

Respondent in person.

Good J. (giving oral judgment): — Of all the offences against the person, with the exception of murder, I should think that causing hurt by acid-throwing is the worst; and people who indulge in it are savages who deserve no mercy as they have shown no mercy to the people they have attacked. It is absolutely no mitigation in a case of this kind to say that it is a first offence. In my view, the severest penalty is called for in all cases of acid-throwing. It is not a mitigating circumstance that no permanent injury or disfigurement was caused. When acid is thrown at a person, if they are not blinded and permanently disfigured, it is pure good luck. The intention of the thrower is the same whether the victim is permanently injured or not; and the act shows a callous disregard of the consequences. It would be very difficult to have any kind of provocation which would be a mitigating circumstance on a charge of acid-throwing; and certainly the circumstances which the respondent puts forward as provocation in this case are no mitigation whatever. It is common knowledge that this offence is becoming very common in this country. I want to make it known that any such case that comes to this Court will be dealt with the utmost severity. I myself have personal knowledge of a case in which a large quantity of acid was stored in convenient containers for the purpose of being used — to cause hurt in a fight — and the Deputy Public Prosecutor has referred me this morning to a local case in which quantities of acid were found in association with the property of gangsters.

Now, coming to the sentence: the learned Magistrate evidently considered that a fine of $400 was adequate for this offence. In my opinion, that sentence shows a complete lack of understanding on the part of the Magistrate of the gravity of the crime and its consequences. I do not know whether this Magistrate has ever seen the result of what I might call "a successful acid-throwing attack." I have. And the man that I saw was blinded in one eye and partially blinded in the other; and his face was so horribly disfigured that people either stared at him in fascination or couldn't bear to look at him. This was in another country where I was the Magistrate and I tried the case. I gave the acid-thrower 7 years and 24 strokes and that sentence was upheld on appeal. In my view, the Magistrate should not have dealt with this case himself at all. Under section 85 of the Courts Ordinance if a First Class Magistrate is of the opinion that in the circumstances of the case the powers of punishment which he possesses would be inadequate, he shall take the necessary steps to transfer the case for trial to a Sessions Court. That is what the Magistrate ought to have done in this case. I set aside the sentence and substitute for it the maximum sentence which the respondent could have been awarded by the Sessions Court which is 3 years' imprisonment and 6 strokes.

Order accordingly.